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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,632

01/28/2004

Louie V. Harrison III

331860.9US

3747

36536 7590 10/24/2008  
WYATT, TARRANT & COMBS, LLP  
1715 AARON BRENNER DRIVE  
SUITE 800  
MEMPHIS, TN 38120-4367

EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

10/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,632	<b>Applicant(s)</b> HARRISON, LOUIE V.	
	<b>Examiner</b> Ralph A. Lewis	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3,5,6,8-10,12 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10,12 and 46-48 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,6 and 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Finality of 7/9/2008 Office Action Withdrawn**

This examiner finds himself in complete agreement with applicant's request for reconsideration filed 10/07/2008, particularly the remarks regarding the impropriety of combining under 35 U.S.C. 103 a tooth whitening strip with package of dental composite material and a strip for carrying an etchant to arrive at applicant's claimed invention. Accordingly, the Finality of the Office Action of 7/9/2008 is withdrawn.

### **Objection to the Drawings**

The drawings are objected to under 37 CFR 1.84 (i) and (p) as being informal. The lines, numbers and letters lack uniformity and are fuzzy lacking sharp definition. No new matter should be entered.

Replacement drawings are required. The objection to the drawings will not be held in abeyance.

### **Rejections based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 46-48, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salsarulo (US 4,303,389) in view of Brattesani et al (US 6,234,793)

Salsarulo discloses in Figure 6 a T-shaped dental matrix band for the restoration of a tooth wherein the horizontal members of the T are sized for wrapping around the embrasures of a tooth and the vertical member of the T folds over the occlusal/incisal portion of a tooth (note Figure 7). The inner surface of the matrix band 1 contacts and maintains in place until cured dental composite material (column 1, line 9) that is used for repairing the tooth. Salsarulo discloses that the matrix band may be comprised of plastic (column 2, line 35), but fails to disclose the explicitly claimed transparent polyester material. Brattesani et al teach that it is well known in the prior art to make such matrix bands of transparent material so as to enable the light curing of common light curable dental composites and of a polyester material (note particularly column 2, lines 19-24). To have constructed the Salsarulo T-shaped dental matrix band of conventional transparent polyester so that it may be used with conventional light cured dental composites would have been obvious to one of ordinary skill in the art in view of the teaching by Brattesani et al.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salsarulo (US 4,303,389) in view of Brattesani et al (US 6,234,793) as applied above and in further view of Summer et al (US 6,509,540).

Summer et al teach the packaging of dental matrix strips side by side in a perforated packaging strip. To have packaged the Salsarulo matrix bands in such a

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manner would have been obvious to one of ordinary skill in the art in view of the teaching by Summer et al.

### **Allowable Subject Matter**

Claims 2, 3, 5, 6 and 49 are objected to as being depednet on a rejected base claim, but would be allowable if rewritten in indpednet form to include all of the limitations of the claims from which they depend.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

This application has been reassigned since Examiner Werner is no longer with the Office. Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis  
October 22, 2008

/Ralph A. Lewis/  
Primary Examiner, Art Unit 3732